IN THE SUPREME COURT OF INDIA

WRIT PETITION (c) NO.494 of 2012

Justice (Retd) KS Puttaswamy and Another ... Petitioners

v.

Union of India and others ... Respondents

PROPOSITIONS ON BEHALF OF K. K. VENUGOPAL, ATTORNEY GENERAL FOR INDIA

1. The issue whether *M.P Sharma* or *Kharak Singh* were rightly decided, by holding that the Right to Privacy is not guaranteed under the Constitution of India, may not be very relevant at the moment, since the matter is now being considered by a bench of 9 Hon'ble judges. However, in view of the fact that the correctness of the said judgments has been referred to 9 judges, the Union of India would seek to justify the conclusion arrived at by the 8 judges bench and the 6 judges bench.

2. In *MP Sharma*, the central issue was whether search warrants and seizure of documents on such searches under Sections 94 and 96 of the Code of Criminal Procedure, 1898 for searching premises of certain companies alleged to have been party to the commission of criminal offences ought be quashed. IN the context of the right to privacy, it was held (per Jagannadhadas, J.):

> "17. ...*A power of search and seizure is in any system of jurisprudence an overriding power of the State for the protection of social security and that power is necessarily regulated by law.* ***When the Constitution makers have thought fit not to subject such regulation to constitutional limitations by recognition of a fundamental right to privacy, analogous to the Fourth Amendment, we have no justification to import it, into a totally different fundamental right, by some process of strained construction.*** *Nor is it legitimate to assume that the constitutional protection under Article 20(3) would be defeated by the statutory provisions for searches." (emphasis supplied)*

3. In *Kharak Singh*, the central issue was whether Chapter XX of the Uttar Pradesh Police Regulations, providing for secret picketing, domiciliary visits, periodical enquiries, reporting of movements and collection of records of 'history sheeters',

violated the fundamental rights guaranteed under Article 21 of the Constitution. It was held by the majority that the regulation which deals with secret picketing [clause (a) of Regulation 236] does not violate personal liberty.

4. However, with regard to the regulation pertaining to domiciliary visits at night [Regulation 236(b)], the Court held (per Ayyangar, J.):

> *"10. ...The question that has next to be considered is whether the intrusion into the residence of a citizen and the knocking at his door with the disturbance to his sleep and ordinary comfort which such action must necessarily involve, constitute a violation of the freedom guaranteed by Article 19(1)(d) or "a deprivation" of the "personal liberty" guaranteed by Article 21.*
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> *13. ...Frankfurter, J. observed in Wolf v. Colorado [338 US 25] .*
> *"The security of one's privacy against arbitrary intrusion by the police ... is basic to a free society. It is therefore implicit in 'the concept of ordered liberty' and as such enforceable against the States through the Due Process Clause. The knock at the door, whether by day or by night, as a prelude to a search, without authority of law but solely on the authority of the police, did not need the commentary of recent history to be condemned as inconsistent with the conception of human rights enshrined in the history and the basic constitutional documents of English-speaking peoples ... We have no hesitation in saying that were a State affirmatively to sanction such police incursion into privacy it would run counter to the guarantee of the Fourteenth Amendment."*
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> *14. Murphy, J. considered that such invasion was against "the very essence of a scheme of ordered liberty.*
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> *15. It is true that in the decision of the U.S. Supreme Court from which we have made these extracts, the Court had to consider also the impact of a violation of the Fourth Amendment which reads:*
> *"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."*
> *and that our Constitution does not in terms confer any like constitutional guarantee. Nevertheless, these extracts would show that an unauthorised intrusion into a person's home and the disturbance caused to him thereby, is as it were the violation of a common law right of a man an ultimate essential of ordered liberty, if not of the very concept of civilisation. An English Common Law maxim asserts that "every man's house is his castle" and in Semayne case [5 Coke 91 : 1 Sm LC (13th Edn) 104 at p. 105] where this was applied, it was stated that "the house of everyone is to him as his castle and fortress as well as for his defence against injury and violence as for his repose". We are not unmindful of the fact that Semayne case [5 Coke 91 : 1 Sm LC (13th Edn) 104 at p. 105] was concerned with the law relating to executions in England, but the passage extracted has a validity quite apart from the context of the particular decision. It embodies an abiding principle which transcends mere protection of property rights and expounds a*

> *concept of "personal liberty" which does not rest on any element of feudalism or on any theory of freedom which has ceased to be of value. 16. In our view clause (b) of Regulation 236 is plainly violative of Article 21 and as there is no "Law" on which the same could be justified it must be struck down as unconstitutional."* (emphasis supplied)

5. Significantly, with regard to the regulations pertaining to shadowing of 'history sheeters' for the purpose of recording their movements and activities and obtaining of information relating to persons with whom they associate, [regulations 236(c), (d) and (e)] the majority of the Court held (per Ayyangar, J.):

> *"17. ...Having given the matter our best consideration we are clearly of the opinion that the freedom guaranteed by Article 19(1)(d) is not infringed by a watch being kept over the movements of the suspect. Nor do we consider that Article 21 has any relevance in the context as was sought to be suggested by learned Counsel for the petitioner. As already pointed out, the right of privacy is not a guaranteed right under our Constitution and therefore the attempt to ascertain the movements of an individual which is merely a manner in which privacy is invaded is not an infringement of a fundamental right guaranteed by Part III." (emphasis supplied)*

6. The conclusions arrived at in *M.P. Sharma* and *Kharak Singh*, regarding the absence of a fundamental right to privacy under our constitution are supported by the debates in the Constituent Assembly on this subject. An analysis of these debates reveals that the Framers rejected the right to privacy being made part of the Fundamental Rights under our constitution.

(i) **The Draft report of the Fundamental Rights Sub-Committee (3rd April 1947)**: The Committee borrowed heavily from the Fourth Amendment in the US Constitution and also from the Weimar Constitution, and its draft report included the following provisions:

> *"9 (d). The right to the secrecy of his correspondence"*
>
> *10. "The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, shall not be violated and no warrants shall issue, but upon probable cause, supported by oath of affirmation, and particularly describing the place to be searched, and the persons or things seized."*[1]

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[1] B. Shiva, The Framing of Indian Constitution, Vol.II @ Pg. 139

(ii) In the Notes to the Draft Report of the Fundamental Rights, the following notes of dissent were made:

Alladi Krishnaswami Aiyyar:

In Relation to Clause 9(d):

"In regard to secrecy of correspondence, I raised a point during the discussions that it need not find a place in a chapter on fundamental rights and that it had better be left to the protection afforded by the ordinary law of the land contained in the various enactments. There is no such right in the American Constitution. Such a provision only finds its place in the post First World War Constitutions. The effect of the clauses upon provisions of the Indian Evidence Act bearing upon privilege will have to be considered. The Indian Evidence Act hedges in the privilege with a number of restrictions vid. *Chapter 9—Sections 120–127. The result of this clause will be that every private correspondence will assume the rank of a State paper or, in the language of Sections 123 and 124, a record relating to the affairs of the State.*

A clause like this may checkmate the prosecution in establishing any case of conspiracy or abetment in a criminal case and might defeat every action for civil conspiracy, the plaintiff being helpless to prove the same by placing before the court the correspondence that passed between the parties, which in all these cases would furnish the most material evidence. The opening words of the clause "public order and morality" would not be of any avail in such cases. On a very careful consideration of the whole subject, I feel that inclusion of such a clause in the chapter on fundamental rights will lead to endless complications and difficulties in the administration of justice. It will be for the committee to consider whether a reconsideration of the clause is called for in the above circumstances."

In relation to Clause 10:

"In regard to this subject I pointed out the difference between the conditions obtaining in America at the time when the American Constitution was drafted and the conditions in India obtaining at present after the provisions of the Criminal Procedure Code in this behalf have been in force for nearly a century. The effect of the clause as it is, will be to abrogate some of the provisions of the Criminal Procedure Code and to leave it to the Supreme Court in particular cases to decide whether the search is reasonable or unreasonable. While I am averse to reagitating the matter I think it may not be too late for the committee to consider this particular clause".[2]

BN Rau:

"If this means that there is to be no search without a court's warrant, it may seriously affect the powers of investigation of the police. Under the existing law, e.g. Criminal Procedure Code, Section 165 (relevant extracts given below), the police have certain

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[2] B.Shiva, The Framing of Indian Constitution, Vol.II @ Pgs. 158-159

important powers. Often, in the course of investigation, a police officer gets information that stolen property has been secreted in a certain place. If he searches it at once, as he can at present, there is a chance of his recovering it; but if he has to apply for a court's warrant, giving full details, the delay involved, under Indian conditions of distance and lack of transport in the interior, may be fatal."[3]

(iii) **The Advisory Committee,** after several rounds of debates, dropped both Clause 9(d) and 10 from the Chapter dealing with Fundamental rights[4].

(iv) During the Constituent Assembly debates, on 30.04.1947, Mr. Somanth Lahiri, while debating on Clause 8, dealing with 'Rights of Freedoms', introduced certain amendments to the same, which included the following:

"*The privacy of correspondence shall be inviolable and may be infringed only in the cases provided by law*".[5]

A motion was passed to discuss the new proposal brought in by Somnath Lahiri later, at the end of the discussion. However, this issue was never taken up by the House and the said proposal was dropped[6].

(v) Further on 03.12.1948, Kazi Syed Karimuddin introduced an amendment to Article 14 to include safeguards against arbitrary search and seizure[7] which read as:

"*The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated and no warrants shall issue but upon probable cause supported by oath or affirmation and particularly describing the place to be searched and the persons or things to be seized.*"

A vote on this amendment was postponed. On 06.12.1948, a re-count of the votes took place, wherein the amendment was defeated.

7. It is well settled that debates in the Constituent Assembly can be relied on as an aid to interpret provisions in the constitution. For instance, in *S.R. Chaudhuri v. State of Punjab, (2001) 7 SCC 126,* this Hon'ble Court held:

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[3] B. Shiva Rao, The Framing of Indian Constitution, Vol.II @ Pg. 152
[4] B. Shiva Rao, The Framing of Indian Constitution, Vol.II @ Pg. 300
[5] Interim Report on Fundamental Rights, Constituent Assembly Debate, Pg. 459, Vol. III
[6] PAPER-THIN SAFEGUARDS AND MASS SURVEILLANCE IN INDIA, Chinmayi, 26 NLSI Rev. (2014) 105
[7] Constituent Assembly Debates, Vol. VII, Page 794/ 840-842

"33. Constitutional provisions are required to be understood and interpreted with an object-oriented approach. A Constitution must not be construed in a narrow and pedantic sense. The words used may be general in terms but, their full import and true meaning, has to be appreciated considering the true context in which the same are used and the purpose which they seek to achieve. Debates in the Constituent Assembly referred to in an earlier part of this judgment clearly indicate that a non-member's inclusion in the Cabinet was considered to be a "privilege" that extends only for six months, during which period the member must get elected, otherwise he would cease to be a Minister. It is a settled position that debates in the Constituent Assembly may be relied upon as an aid to interpret a constitutional provision because it is the function of the court to find out the intention of the framers of the Constitution. We must remember that a Constitution is not just a document in solemn form, but a living framework for the Government of the people exhibiting a sufficient degree of cohesion and its successful working depends upon the democratic spirit underlying it being respected in letter and in spirit. The debates clearly indicate the "privilege" to extend "only" for six months."(emphasis supplied)

In *A.K. Roy vs Union of India (1982) 1 SCC 271*, the Court observed:

"9. Our Constituent Assembly was composed of famous men who had a variegated experience of life. They were not elected by the people to frame the Constitution but that was their strength, not their weakness. They were neither bound by a popular mandate nor bridled by a party whip. They brought to bear on their task their vast experience of life — in fields social, economic and political. Their deliberations, which run into twelve volumes, are a testimony to the time and attention which they gave with care and concern to evolving a generally acceptable instrument for the regulation of the fundamental affairs of the country and the life and liberty of its people."

[Also see Kesavananda Bharati v. State of Kerala, (1973) 4 SCC 225 at Paras 186, 1088, 1367 and 1368, T.M.A. Pai Foundation v. State of Karnataka, (2002) 8 SCC 481, at paras 205, 207; Special Reference No. 1 of 2002, In re (Gujarat Assembly Election matter), (2002) 8 SCC 237, at paras 16, 18; Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217 at para 772]

8. It is true that, in a number of judgments, this Court has taken the view that Article 21 of the constitution, though couched in negative terms, in fact confers the fundamental right to life and personal liberty as positive rights (*For instance, See Maneka Gandhi vs. Union of India, (1978) 1 SCC 248, @ para 5*).

9. Between the right to life, and the right to personal liberty, the former has primacy. This is because the right to personal liberty cannot exist in the absence of the right

to life itself. If therefore, a conflict arises between a right traceable to personal liberty and a right traceable to life, the right traceable to life will prevail over the right traceable to personal liberty. Even the rights to life or personal liberty are not absolute, but are qualified, as the State is entitled, through a validly enacted statute, to even take away the right to life (such as in the 'rarest of rare' cases of murder) and personal liberty (through incarceration for crimes).

10. The right to personal liberty itself has been held to include a conglomerate of different and varied rights like the right to travel, the right to locomotion, the right against handcuffing, the right against bar fetters, the right against solitary confinement etc.

11. Judgments by smaller benches of this Hon'ble Court have also taken the view that the right to privacy can be traced to the right to personal liberty under Article 21 of Constitution. The right to privacy, if at all, can be only one among the varied rights falling under the umbrella of the right to personal liberty, and would be a species of the larger genus i.e. liberty. Again, if the right to privacy is separately examined, it would be seen that this right itself consists of a large number of different and independent 'rights', these being the sub-species of the larger species representing the right to privacy. In this regard, the following observations from the decision of the House of Lords in *Wainwright v. Home Office* [2004] 2 A.C. 406 are apposite:

> *"15. My Lords, let us first consider the proposed tort of invasion of privacy. Since the famous article by Warren and Brandeis ("The Right to Privacy" (1890) 4 Harvard LR 193) the question of whether such a tort exists, or should exist, has been much debated in common law jurisdictions. Warren and Brandeis suggested that one could generalise certain cases on defamation, breach of copyright in unpublished letters, trade secrets and breach of confidence as all based upon the protection of a common value* ****419*** *which they called privacy or, following Judge Cooley (Cooley on Torts, 2nd ed (1888), p 29) "the right to be let alone". They said that identifying this common element should enable the courts to declare the existence of a general principle which protected a person's appearance, sayings, acts and personal relations from being exposed in public.*

16 Courts in the United States were receptive to this proposal and a jurisprudence of privacy began to develop. It became apparent, however, that the developments could not be contained within a single principle; not, at any rate, one with greater explanatory power than the proposition that it was based upon the protection of a value which could be described as privacy. Dean Prosser, in his work on The Law of Torts, 4th ed (1971), p 804, said that:

"What has emerged is no very simple matter ... it is not one tort, but a complex of four. To date the law of privacy comprises four distinct kinds of invasion of four different interests of the plaintiff, which are tied together by the common name, but otherwise have almost nothing in common except that each represents an interference with the right of the plaintiff 'to be let alone'."

17. Dean Prosser's taxonomy divided the subject into (1) intrusion upon the plaintiff's physical solitude or seclusion (including unlawful searches, telephone tapping, long-distance photography and telephone harassment) (2) public disclosure of private facts and (3) publicity putting the plaintiff in a false light and (4) appropriation, for the defendant's advantage, of the plaintiff's name or likeness. These, he said, at p 814, had different elements and were subject to different defences.

18 The need in the United States to break down the concept of "invasion of privacy" into a number of loosely-linked torts must cast doubt upon the value of any high-level generalisation which can perform a useful function in enabling one to deduce the rule to be applied in a concrete case. English law has so far been unwilling, perhaps unable, to formulate any such high-level principle. There are a number of common law and statutory remedies of which it may be said that one at least of the underlying values they protect is a right of privacy. Sir Brian Neill's well known article "Privacy: a challenge for the next century" in Protecting Privacy (ed B Markesinis, 1999) contains a survey. Common law torts include trespass, nuisance, defamation and malicious falsehood; there is the equitable action for breach of confidence and statutory remedies under the Protection from Harassment Act 1997 and the Data Protection Act 1998. There are also extra-legal remedies under Codes of Practice applicable to broadcasters and newspapers. But there are gaps; cases in which the courts have considered that an invasion of privacy deserves a remedy which the existing law does not offer. Sometimes the perceived gap can be filled by judicious development of an existing principle. The law of breach of confidence has in recent years undergone such a process: see in particular the judgment of Lord Phillips of Worth Matravers MR in Campbell v MGN Ltd [2003] QB 633 . On the other hand, an attempt to create a tort of telephone harassment by a radical change in the basis of the action for private nuisance in Khorasandjian v Bush [1993] QB 727 was held by the House of Lords inHunter v Canary Wharf Ltd [1997] AC 655 to be a step too far. The gap was filled by the 1997 Act.

19. What the courts have so far refused to do is to formulate a general principle of "invasion of privacy" (I use the quotation marks to signify doubt about what in such a context the expression would mean) from which the conditions of liability in the particular case can be deduced. The reasons were discussed by Sir Robert Megarry V-C in Malone v Metropolitan Police Comr [1979] Ch 344 , 372-

> *381. I shall be sparing in citation but the whole of Sir Robert's treatment of the subject deserves careful reading. The question was whether the plaintiff had a cause of action for having his telephone tapped by the police without any trespass upon his land..... ...."*

12. If this be so, all aspects of privacy, constituting different and independent aspects, including those set out in the note appended hereto, will not automatically qualify as Fundamental rights, but at the most, as common law rights, whilst some others, even accepting the arguments of the Petitioners, may qualify as Fundamental Rights.

13. India is a developing country, and reports of the World Bank show that there is a huge section of our population (numbering about 270 million) which lives below the poverty line, with the basic means to live with human dignity being unavailable to them. They lead what this Hon'ble Court has termed as a 'mere animal existence'. This Hon'ble Court has, in a catena of cases, taken the view that the right to life guaranteed under Article 21 of the Constitution implies the right to food, water, decent environment, education, medical care and shelter. For instance, in *Shantistar Builders v Narayan Khimalal Totame,* (1990) 1 SCC 520, it was held:

> *"9. Basic needs of man have traditionally been accepted to be three — food, clothing and shelter. The right to life is guaranteed in any civilized society. That would take within its sweep the right to food, the right to clothing, the right to decent environment and a reasonable accommodation to live in. The difference between the need of an animal and a human being for shelter has to be kept in view. For the animal it is the bare protection of the body; for a human being it has to be a suitable accommodation which would allow him to grow in every aspect — physical, mental and intellectual. The Constitution aims at ensuring fuller development of every child. That would be possible only if the child is in a proper home. It is not necessary that every citizen must be ensured of living in a well-built comfortable house but a reasonable home particularly for people in India can even be mud-built thatched house or a mud-built fire-proof accommodation.*
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> *10. With the increase of population and the shift of the rural masses to urban areas over the decades the ratio of poor people without houses in the urban areas has rapidly increased. This is a feature which has become more perceptible after independence. Apart from the fact that people in search of work move to urban agglomerations, availability of amenities and living conveniences*

also attract people to move from rural areas to cities. Industrialisation is equally responsible for concentration of population around industries. These are features which are mainly responsible for increase in the homeless urban population. Millions of people today live on the pavements of different cities of India and a greater number live animal-like existence in jhuggis.

11. The Planning Commission took note of this situation and was struck by the fact that there was no corresponding rise in accommodation with the growth of population and the shift of the rural people to the cities. The growing realisation of this disparity led to the passing of the Act and acquisition of vacant sites for purposes of housing....."

14. This being so, when the state undertakes welfare measures and schemes traceable not only to the right to life under Article 21 of the Constitution, but also to the guarantees in the Preamble to the Constitution, like social justice, economic justice and political justice, equality in status and opportunity, and protecting the dignity of the individual, a claim to privacy, which would destroy or erode this basic foundation of the Constitution, can never be elevated to the status of a fundamental right.

15. In other words, in a developing country, where millions of people are devoid of the basic necessities of life and do not even have shelter, food, clothing or jobs, and are forced to sleep on pavements even in the height of winter and, perhaps, to die, no claim to a right to privacy of the nature claimed in this case, as a fundamental right, would lie. Any such claim would, in the background of what is stated above, be based on an approach which is esoteric and elitist, especially in the light of the allegation that Aadhar would convert India into a totalitarian state.

16. The position may be different in developed countries, where the poverty level is minimal, education is all pervasive and, on the whole, life is comfortable for the general population. There, a claim to privacy may have greater credibility than in a developing country like ours, where millions of people, larger in number than the total populations of many countries, are suffering from wholesale deprivation of the basic necessities of life.

17. Additionally, a right to as vague and amorphous a concept as privacy cannot be held to be a fundamental right so as to deprive a vast section of the population of their fundamental and human rights, upheld by this court in a large number of judgments including the *Shantistar builders* case cited earlier, as well as *Francis Coralie Mullin vs. Administrator, U.T. of Delhi (1981) 1 SCC 608, PUCL vs. Union of India, (1997) 1 SCC 301 etc.*

18. Reference, in this regard, may also be made to the Article titled *'What do we mean by "Right to Privacy"'*, by Frederick Davis, published in the South Dakota Law Review [4 SDL Rev 1 1959], which analyses the extremely vague nature of the 'right to privacy', and expresses the view that privacy is a sociological notion, not a jural concept, and that "as a tool available to courts in their every day task of deciding, in particular cases, which interests must be protected and to what extent, "right to privacy" has little more utility than "pursuit of happiness.""

19. It is also submitted that the right to privacy can never be claimed, if practically each and every one of the aspects sought to be protected is already in the public domain and the information in question has already been parted with by the citizens. For instance, a reading of the census form, issued under the Census Act, 1948, would show that information in much greater detail is routinely sought as part of the census exercise. Similarly, Sections 33A and 75A of the Representation of People Act, 1951, read with Rule 4 of the Conduct of Election Rules, and Form 26 appended thereto, would show the elaborate nature of the information that is required to be disclosed, including the pendency of criminal cases, details of assets and loans, educational qualifications etc.. The photograph is an integral part of the Driver's License, or the Voter ID card, and is displayed on the voters list itself. Additionally, the print/impression of all ten fingers is taken when a passport is issued, or when a visa is granted, or when a transaction relating to the transfer of immoveable property is registered.

20. The following observations from the decision of this Hon'ble Court in *R. Rajgopal v State of T.N.*, (1994) 6 SCC 632, are germane in this regard:

> *"(2) The rule aforesaid is subject to the exception, that any publication concerning the aforesaid aspects becomes unobjectionable if such publication is based upon public records including court records. This is for the reason that once a matter becomes a matter of public record, the right to privacy no longer subsists and it becomes a legitimate subject for comment by press and media among others...."* (emphasis supplied)

21. Even otherwise, it is submitted that there can be no claim to a privacy right against identification for the purpose of public welfare and social schemes of the government, and to plug leakages and corruption in the administration of such schemes. It may be pointed out that the importance and utility of Aadhaar for delivery of public services like PDS, curbing bogus admissions in schools and verification of mobile number subscribers has not only been upheld but endorsed and directed/recommended by this Hon'ble Court. In *PUCL Vs. Union of India* (2011) 14 SCC 331, this Hon'ble Court has approved the recommendations of the High Powered Committee headed by Justice D.P Wadhwa, which recommended linking of Aadhaar with PDS and encouraged State Governments to adopt the same. In *State of Kerala & Others Vs. President, Parents Teachers Association, SNVUP and Others* (2013) 2 SCC 705, the Court directed use of Aadhaar for checking bogus admissions in schools with the following observations:

> *"18. We are, however, inclined to give a direction to the Education Department, State of Kerala to forthwith give effect to a circular dated 12.10.2011 to issue UID Card to all the school children and follow the guidelines and directions contained in their circular. Needless to say, the Government can always adopt, in future, better scientific methods to curb such types of bogus admissions in various aided schools."*

While monitoring the PILs relating to night shelters for the homeless and the right to food trough the public distribution system, this Hon'ble Court lauded and complemented the efforts of State Governments for *inter alia* carrying out biometric identification of the head of family of each household to eliminate

fictitious, bogus and ineligible BPL/AAY household cards. This is evident from the following extracts in *PUCL v. Union of India* (2010) 13 SCC 45 :

> *"48. In the affidavit, it is mentioned that NGO, Samya had conducted survey and identified 15,000 homeless beneficiaries of which 14,850 which have been approved for giving "homeless cards". These cards are being prepared zone wise and the list is displayed at the office of the Assistant Commissioners/Circle Office for distribution of the special homeless cards to the beneficiaries after obtaining their biometric impressions. The NGO, Samya has also been informed to facilitate delivery of these cards to the beneficiaries and enable them to lift the specified food articles and kerosene oil allocated from the linked fair price shop/kerosene oil depot. The details have been mentioned in the AAY programme.*
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> *49. It is mentioned in the affidavit that under the Central Scheme of Food and Supplies Department, Government of NCT of Delhi is carrying out review of BPL/AAY household cards which were issued before 15-1-2009. It is simultaneously carrying out biometric identification of head of family of each household to eliminate fictitious, bogus and ineligible cards and those who have left Delhi.*
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> ....
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> *53. The Delhi Government has very minutely and carefully analysed the problems of homeless people living in these shelters and is trying to provide a comprehensive programme for the homeless. We must compliment the Government of NCT of Delhi for this effort."*

Similarly, in *PUCL (PDS matters) v. Union of India & Ors.* (2013) 14 SCC 368, this Hon'ble Court held that computerisation is going to help the public distribution system in the country in a big way and encouraged and endorsed the digitization of database including biometric identification of the beneficiaries. The following extracts from the abovementioned order are relevant:

> *"2. There seems to be a general consensus that computerisation is going to help the public distribution system in the country in a big way. In the affidavit it is stated that the Department of Food and Public Distribution has been pursuing the States to undertake special drive to eliminate bogus/duplicate ration cards and as a result, 209.55 lakh ration cards have been eliminated since 2006 and the annual saving of foodgrains subsidy has worked out to about Rs 8200 crores per annum. It is further mentioned in the affidavit that end-to-end computerisation of public distribution system comprises creation and management of digitised beneficiary database including biometric identification of the beneficiaries, supply chain management of TPDS commodities till fair price shops.*
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> *3. It is further stated in the affidavit that in the State of Gujarat, the process of computerisation is at an advanced stage where issue of bar coded ration cards has led to a reduction of 16 lakh ration cards. It is expected that once the biometric details are collected,*

this number would increase further. For the present, a reduction of 16 lakh ration cards would translate into an annual saving of over Rs 600 crores. This is just to illustrate that computerisation would go in a big way to help the targeted population of the public distribution system in the country.

4. In the affidavit it is further mentioned that the Government of India has set up a task force under the Chairmanship of Mr Nandan Nilekani, Chairman, UIDAI, to recommend, amongst others, an IT strategy for the public distribution system. We request Mr Nandan Nilekani to suggest us ways and means by which computerisation process of the public distribution system can be expedited. Let a brief report/affidavit be filed by Mr Nandan Nilekani within four weeks from today."

Again, in *PUCL v. Union of India* (2010) 5 SCC 318, the Court also endorsed biometric identification of homeless persons so that the benefits like supply of food and kerosene oil available to persons who are below poverty line can be extended to the correct beneficiaries.

22. It is also noteworthy that even in the United States of America, the use of the Social Security Number (SSN), which involves the collection of a wide variety of personal information by the government, has been upheld by the courts. For instance, in *Greater Cleveland Wel. Rights Org. vs. Bauer*, 462 F. Supp. 1313 (N.D. Ohio 1978), the Court held:

"Initially the Court will consider plaintiffs' assertion that the use of their social security numbers in the match program without their prior permission was violative of their constitutional right to privacy. The Court finds this assertion to be without merit.

The Supreme Court had occasion to discuss the Constitutional right of privacy in Paul v. Davis, 424 U.S. 693, 712-13, 96 S. Ct. 1155, 1166, 47 L. Ed. 2d 405 (1976):

While there is no "right of privacy" found in any specific guarantee of the Constitution, the Court has recognized that "zones of privacy" may be created by more specific constitutional guarantees and thereby impose limits upon government power. See Roe v. Wade, 410 U.S. 113, 152-153 [93 S. Ct. 705, 35 L. Ed. 2d 147] (1973). Respondent's case, however, comes within none of these areas. He does not seek to suppress evidence seized in the course of an unreasonable search. See Katz v. United States, 389 U.S. 347, 351 [88 S. Ct. 507, 19 L. Ed. 2d 576] (1967); Terry v. Ohio, 392 U.S. 1, 8-9 [88 S. Ct. 1868, 20 L. Ed. 2d 889] (1968). And our other "right of privacy" cases, while defying categorical

description, deal generally with substantive aspects of the Fourteenth Amendment. In Roe the Court pointed out that the personal rights found in this guarantee of personal privacy must be limited to those which are "fundamental" or "implicit in the concept of ordered liberty" as described in Palko v. Connecticut, 302 U.S. 319, 325 [58 S. Ct. 149, 82 L. Ed. 288] (1937). The activities detailed as being within this definition were ones very different from that for which respondent claims constitutional protection matters relating to marriage, procreation, contraception, family relationships, and child rearing and education. In these areas it has been held that there are limitations on the States' power to substantively regulate conduct.

In the present case, plaintiffs assert that the constitution was violated when defendants used the social security numbers of class members in the match program without having previously informed them of such intended use. As in Paul, this is "very different" from the rights which have been recognized as "fundamental" or "implicit in the concept of ordered liberty." It is clear that defendants' activities cannot be viewed as violative of any right to privacy protected by the constitution. See Jaffess v. HEW, 393 F. Supp. 626, 629 (S.D.N.Y.1975)." (emphasis supplied)

23. Reference may also be made to the decision of the United States District Court, Eastern District, Virginia, in *United States of America v Edward Joseph Matish,* [193 F. Supp. 3d 585], another case concerning the right to privacy. The Court, in that case, took the view that "the government should be able to use the most advanced technological means to overcome criminal activity that is conducted in secret...".

24. To sum up, it is submitted that the reference to 9 judges was to decide as to whether *M.P Sharma* and *Kharak Singh* were rightly decided, and whether a right to privacy of the nature claimed in the present case could ever be countenanced by the Court as a Fundamental Right. In view of the fact that a large section of the people would be deprived of their basic needs and rights if the claim of the petitioners to a fundamental right to privacy is accepted, even if a fundamental right to privacy is held to exist in respect of some other claim(s), no such right, as claimed by the petitioners, should be recognized as a Fundamental right.

25. The right to life being a primordial right, every species of rights found by the Court to be traceable to the right to life (such as the right to food to prevent starvation, a job to eke out a livelihood, medical aid to combat diseases and emergencies and basic education to get rid of the fetters of ignorance, backwardness and caste) would be of utmost importance and value. All these attributes of human dignity, traceable to the right to life, can never be the subject matter of a claim based on the right to privacy.

26. In view of the above submissions, the Writ petitions under Article 32 of the Constitution are not maintainable, and, accordingly, are liable to be dismissed.

POSSIBLE FACETS OF PRIVACY

1. Intrusion upon a person's seclusion or solitude, or into his/her private affairs – let alone
2. Public disclosure of embarrassing facts – dignity
3. Publicity which places a person in a false light in the public eye – reputation
4. Appropriation of a person's name of likeness
5. Unauthorized recording, photography and filming – personal autonomy
6. Electronic surveillance, interception of correspondence, telephone tapping – surveillance
7. Disclosure of information given to public authorities or professional advisers – confidential
8. Entry and search of premises and property
9. Search of a person – bodily integrity
10. Compulsory medical examinations or tests – bodily integrity
11. Pursuit by the press or mass media – Surveillance

FACETS ENUMERATED BY THE PETITIONERS

1. Bodily integrity
2. Personal autonomy
3. Right to be let alone
4. Informational self-determination
5. Protection from state surveillance
6. Dignity
7. Confidentiality
8. Compelled speech
9. Freedom to dissent
10. Freedom of movement
11. Freedom to think